

## January 9, 2008

MEMBERS PRESENT: Mr. Bedini, Mrs. Hill, Mr. LaMuniere, Mr. Picton, Mr. Thomson

ALTERNATES PRESENT: Mr. Bohan, Mr. Wadelton

ALTERNATE ABSENT: Mr. Potter

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr./Mrs. Klein, Mr. Neff, Mrs. Branson, Mr. Owens, Mr. Solley, Mr. Wyant, Mr. Szymanski, Mr. Hoffman, Mr. Roach, Mr. Forese

### REGULAR MEETING

Mr. Picton called the Meeting to order at 7:02 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson. He welcomed the new Alternate, Mr. Bohan.

MOTION: To add the following subsequent business not already posted on the agenda: Other Business: Bradley/188 Sabbaday Lane/Agricultural Exemption and Miscellaneous Administrative Issues and Executive Session to Discuss Pending Litigation. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

### Consideration of the Minutes

The 12/12/07 Regular Meeting minutes were accepted as corrected.

P. 1: Paragraph 3: Add to the end of the first sentence: "below the western most culvert on Rt. 202."

P. 1: Paragraph 3: Line 3: Change "it" to "the culvert."

P. 1: Paragraph 4: Line 2: Insert after "marsh:" "where streams feed into Meeker Swamp."

P. 2: First full paragraph: Correct spelling is "heeled."

P. 2: Paragraph 2: Line 5: Change "old" to: "derelict vehicles that were beyond repair."

P. 2: Paragraph 3: Line 6: Insert: "recent" before "beaver dam."

P. 6: Line 2: Insert: "or upland review area" after "regulated area."

P. 7: Line 6: Add to the end of the sentence: "and may include intermittent watercourses."

P. 8: Under Mello: Line 11: Insert: "existing" before "culvert." Delete: "installed."

P. 8: Under Mello: Line 15: Delete: "would mean."

P. 8: Under Mello: Line 16: Change the sentence beginning with "It" to: It was noted that the wall along side the driveway would act as a dam at flood stage and was both higher and longer than the original."

P. 8: Under Mello: Third line from bottom: Change: "change in grade" to: "due to the grade of the stream and banks."

P.11: It was noted that Mr. Lautier had not been issued a citation. The commissioners agreed that penalties for violations should always be discussed.

P.11: The correct spelling of "Andersson" was noted.

P.11: Under Brown: The commissioners asked why the enforcement order had not been filed on the Land Records. Mr. Ajello will check to make sure this has been done. Also, it was noted that it should be the enforcement order, not the notice of violation, which is filed on the Land Records.

P.12: Under Potter: Add to end of last sentence: "relating strictly to the proposed lot line change."

P.13: Under Revision of Ordinance #711: Line 1: Should be: "Mrs. J. Hill." Also at the end of the 4th line from bottom: Change: "OF IN" to "OR IN."

MOTION: To accept the 12/12/07 Regular Meeting minutes with changes as noted. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

Pending Applications

**Getnick/237 West Shore Road/#IW-07-62/Repair Stonewall**

**Madoff/241 West Shore Road/#IW-07-63/Repair Stonewall**

It was noted that no one was present to represent either applicant and that the time limits for acting on these applications would expire prior to the next meeting. Mr. Picton cited information he received from Mr. Tessitore, who advised him that 1) the applicant must prove that the work proposed will result in no negative impact to the lake, 2) the Commission's consultant would then review the applicant's argument, and 3) the Commission could change the applicant for the Commission's consultant's fees. Mr. Picton also received further information from Mr. McGowan on the importance of naturally configured and vegetated shorelines. Thirdly, he referred to the report, "Shoreline Stabilization Guidelines," by the Restill Association. Mr. Picton noted that the Commission now had definitive material on shoreline functions and that in light of this material and due to the Commission's concerns, applicants would have to prove that proposed landscaping features along the shoreline would not be harmful to the lake. Mr. Bedini noted that future applications for shoreline projects should include: 1) a map of the property showing the boundary at the lake, 2) proof of ownership of that land, and 3) a report from a limnologist or professional in that field that states why the proposed work won't harm the lake and that it won't change the ecology of the lake. Mr. Picton noted that neither application contained sufficient information upon which the Commission could base a decision.

MOTION: To deny without prejudice Application #IW-07-62 submitted by Mr. Getnick to repair the stonewall at 237 West Shore Road due to lack of information and because the statutory time limit for acting will have run out by the next meeting and to inform the applicant in his letter of denial that the following information is required if he resubmits: 1) a map of the property showing the boundary at the lake, 2) proof of ownership of that land, and 3) a report from a limnologist or professional in that field stating why the proposed work will not harm the lake or change the ecology of the lake. By Mr. Bedini, seconded by Mr. LaMuniere, and passed 5-0.

MOTION: To deny without prejudice Application #IW-07-63 submitted by Mrs. Madoff to repair the stonewall at 241 West Shore Road due to lack of information and because the statutory time limit for acting will have run out by the next meeting and to inform the applicant in her letter of denial that the following information is required if she resubmits: 1) a map of the property showing the boundary at the lake, 2) proof of ownership of that land, and 3) a report from a limnologist or professional in that field stating why the proposed work will not harm the lake or change the ecology of the lake. By Mr. Bedini, seconded by Mr. Picton, and passed 5-0.

It was noted that Mr. McGowan of the Lake Waramaug Task Force offered to have Dr. Kortmann speak at a program held for the three towns surrounding the lake. Mr. Ajello was asked to contact Mr. McGowan to help coordinate this educational program.

**Klein-Cannizzaro/285 West Shore Road/#IW-07-66/2 Lot Subdivision:** Mr. Neff, engineer, noted that at the last meeting there had been a question about whether there were wetlands in the vicinity of the proposed driveway. He said that since then wetlands had, indeed, been flagged along West Shore Road near the driveway. He submitted a report by Mr. Stansfield, soil scientist, dated 1/8/08 and the

revised map, "Proposed Site Development Plan," by Mr. Neff, revised to 1/5/08. The revised map showed the driveway had been rerouted to avoid wetlands issues to access the proposed lot from Tinker Hill Road. Mrs. D. Hill asked if any seeps had been found in this area. Mr. Neff said, no, they were located further west and that in terms of feasible and prudent alternatives the revised route would have less potential impact and wetlands disturbance than the access from West Shore Road. Mr. Neff noted that the erosion control plan had also been revised. Mr. Picton stated that if there were no wetlands within 100 feet of the new driveway route, the Commission would be OK with it. A site inspection was scheduled for Tuesday, January 15, 2008 at 4:00 p.m. Mr. Picton asked if a driveway profile had been submitted. Mr. Neff responded it was on Sheet #11 of the plans. The grading and drainage plans on sheet #11 were reviewed. Mr. Neff explained the majority of the driveway would have a 10% grade with one 100 foot section reaching 12%. A rip rapped swale was proposed along the high side of the driveway. Mr. Picton asked if there were enough cross culverts proposed and how far apart cross culverts are usually installed. Mr. Neff said that a few discharge points that were at least 250 feet apart were proposed. Mr. Bohan noted the number of cross culverts depends on the grade and the size of the watershed. Mr. Picton asked Mr. Neff to check to determine whether additional cross culverts were needed. He asked Mr. Ajello to review the application for completeness before the next meeting.

#### New Applications

**Steep Rock Assn./124 Christian Street/#IW-08-01/Herbicide Application:** Mr. Ajello circulated copies of the application review checklist. Mr. Stafford, Board of Trustees, and Mr. Roach, an expert in the control and eradication of invasive species, represented Steep Rock. The following maps were submitted: soil map, aerial photo, topo map, and trail map. It was noted the application is to eradicate invasive reed canary grass in the six acres known as "Boardwalk Meadow." A photo taken of this area to show the extent of the reed canary grass was submitted. Mr. Ajello noted that information about the herbicide and a description of the control and management process was included in the application. Mr. Stafford said the grass would be mowed down in the winter and since it emerges earlier in the growing season than do the native species, it would be sprayed early in the season without affecting other vegetation. Mr. Roach explained that a low dose of the herbicide, Habitat, was effective when sprayed early in the season. He noted this would be a multi year commitment and that he anticipated returning for reapplication in small areas. He thought the approach was a conservative one for this sensitive area. The properties of Habitat were briefly reviewed. A site inspection was scheduled for Tuesday, January 15, 2008 at 3:30 p.m.

#### Other Business

**Kessler/103 West Mountain Road/Request to Amend Permit #IW-06-05:** Mrs. D. Hill asked Mr. Owens, architect, if his letter of authorization was current. Mr. Owens stated that it had not been rescinded. Sheet A007, "Kessler Guest House," by Halper Owens Architects, Inc., dated 12/14/07 was reviewed. It compared the approved lot coverage with the proposed driveway reconfiguration. Mr. Owens explained that in exchange for a circular driveway, the paving and flagstone previously approved around the house would be reduced and the porch approved on the west side of the house would be decreased 2 feet in width. He noted that comparative coverage calculations were included on the sheet. These showed the proposed revisions would result in a 68 sq. ft. decrease in coverage. Mr. Owens said the driveway would have a coarse trap rock surface. Mr. Picton asked what the new surface would be in the areas where paving and flagstone were removed. Mr. Owens said it would be garden. The specific areas where pavement and stone would be removed or reduced were noted; 1) under the pergola, 2) portions of the terraces on the SE and E side of the house, and 3) the paved walk from the house to the driveway would be removed. Mr. Picton noted the proposed revision would not change the limits of the built environment and said that he appreciated the effort to reduce the impervious surfaces within the built perimeter. Mr. Owens labeled the map so that it would be clear to the WEO exactly

which areas of pavement and stone were to be removed. Mr. LaMuniere noted the revision would have no negative impact on the wetlands.

MOTION: To approve the request by Mr. and Mrs. Kessler to amend Permit #IW-06-05 to change the driveway configuration at 103 West Mountain Road as noted on Map A007 revised to 1/9/08. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

**Bradley/188 Sabaday Lane/Request for Agricultural Exemption:** Mr. Ajello noted that equipment had been removing vegetation at the edges of agricultural fields and that there was a watercourse in the adjacent hedgerow. He presented photos and Assessor's Map 3-8 to show the location of the fields. Mr. Forese said the farm needed to clear the invasives to maintain the fields. Mr. LaMuniere noted that this was a regular farming operation. He said the field had been in corn until two years ago and was now hayed and he asked that the trees near the stream be left for canopy protection. Mr. Picton asked that machinery not be operated from the stream and noted that vegetation, even invasive plants, keeps streambanks stable. Mr. Forese assured the Commission he had not disturbed the stream course. Mr. Picton noted that this operation differed from others the Commission had recently reviewed because nothing greater than an inch in diameter had been cut. This, he said, was evidence that the growth was recent, that it was field maintenance, and it was a bonafide agricultural use. Mr. Forese said he would mow around any dead trees for now and that someone else would cut them at a later date. Mr. Ajello said he was concerned about the diversion ditch area. Mr. Forese said he would not work above the drainage ditch area and that he would reach across it with the equipment rather than work from the steep banks. Mr. Ajello asked if he had been right to bring this matter before the Commission. Mr. Picton said, yes, because if it hadn't been a bonafide agricultural activity, it would have been regulated. He encouraged Mr. Forese not to cut the older woody growth, to leave vegetation on the streambank so that it would remain stable, and to leave the natural forest growth undisturbed.

MOTION: To grant the request by Mrs. Bradley for an agricultural exemption on her property at 188 Sabbaday Lane as described in the application materials. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Mr. Solley commented that he had been alarmed to learn that Mr. Forese had been asked to appear before the Commission because what he had been requested to apply for was work that farmers routinely do every year. He thought the Commission was wasting its time monitoring field maintenance, saying it was something that the EO could do on his own. Mr. Picton agreed that in most cases this would be so, but this case was slightly different because there was a stream so close by. He agreed that most yearly farm maintenance operations would not have to come before the Commission.

#### Enforcement

**Andersson/35-45 Gunn Hill Road/Unauthorized Clearing, Trenching in Wetlands:** Mr. Picton identified new information that had been submitted to the file: 1) the 1/8/08 letter from Robinson and Cole with attached reports by Mr. Klein, soil scientist and Mrs. Corrigan, biologist, which include detailed findings about the damages done to the wetlands on this property and their recommendations regarding restoration, and 2) the Land Tech report dated 12/28/07, which includes a specific analysis of the regulated activities that occurred and strong guidance regarding the needed restoration. He thought this information was definitive and hoped it would be incorporated in a course of action to restore the property. On behalf of the intervener, Atty. Olson submitted a photo for the record to contrast the one in the Land Tech report and offered to answer any questions about his letter that the Commission might have. Mr. Ajello noted that all parties involved had received copies of all of the material cited above.

**Slaymaker/17 Sunset Lane/Unauthorized Drainage and Excavation Work/#IW-07-V14:** Atty. Malley and Mr. Nadeau, contractor, were present. Atty. Malley presented a photo of the back yard. He noted that in 1995 the Health Dept. had approved a septic repair, but the work had never been done. He

said the owner now proposed to construct a 24' X 32' addition to the house. As part of the application process, he said the state sanitarian had required the installation of a curtain drain to determine if the septic repair work could be done. He said the curtain drain had been installed within 100 ft. of what the WEO had determined was an intermittent stream. Mr. Ajello noted that the wetland map indicates there are wetland soils in the entire vicinity of this property. Mr. Picton noted that had the Health Dept. notified the Commission of the proposed repair work, it would have required that the wetlands be flagged prior to the commencement of work. He stated that the Health Dept. must include the Inland Wetlands Commission in the permit process because it has regulatory authority. Mr. Nadeau said that Mr. Ajello had told him he could start work, but Mr. Ajello said that he had not said this, that he had not discussed septic repair work with Mr. Nadeau, and that an application had never been submitted. Atty. Malley noted there is an existing house on the property and that the septic repair work had to be done. He asked the Commission to conduct an inspection to determine whether there were, indeed, wetlands and whether the water flowing was an intermittent stream. Mr. Bedini noted that the commissioners are not soil scientists. Mr. Picton said the repair work would be permitted, but the Commission would regulate how it would be done. It was the consensus that an inspection by the Commission would be inconclusive and that wetlands mapping would be required, but a site inspection was scheduled for January 15, 2008 at 3:00 p.m. at Atty. Malley's request. Mr. Picton asked Mr. Ajello if he had already requested wetlands mapping and a Wetlands application from the contractor. Mr. Ajello said he had.

#### **Mello/183 Woodbury Road/Unauthorized Bridge and Culvert Work/**

**#IW-07-V11:** Mr. Szymanski, engineer, submitted his report, "Culvert/Watercourse Analysis Calculations," in response to questions raised by the Commission at the last meeting. He said it addressed the hydraulics of the culvert and how it was affected by the increase in height of the stonewall and he summarized his report for the Commission. Mr. Picton asked if the stonewall was longer as well as higher. Mr. Szymanski said it was and that this had been included in the analysis. It was noted that in a 100 year storm the stream would overtop the driveway with up to 1 ft. of water flowing around the wall on the house side of the stream. The culvert outlet was discussed. Mr. Szymanski said the sides should have been smooth surfaced and that because it had not been possible to saw cut the left side, the wall on that side had been reformed. However, a "lip" was created and this caused additional friction. Mr. Szymanski said this should be flat along the edge of the pipe so that no scouring would occur. Mr. Ajello circulated photos of the site including one that showed that the silt fencing had been removed prematurely. Mr. Picton asked why this had been done, but the contractor did not know why except that Mr. Mello had asked that it be done. Mr. Ajello asked about the debris on top of the wing wall. Mr. Szymanski said it should be removed. Mr. Szymanski made the following recommendations: 1) that the right side of the upstream culvert be smooth, 2) that the left side of the box culvert be reconstructed so that the inlet slopes to the edge of the pipe, 3) that all debris be removed from the site, and 4) that the silt fence be properly reinstalled until the disturbed areas are stabilized. Mr. Picton asked for these recommendations in writing. Mr. Szymanski noted the owner also wants to surface the driveway with processed gravel and to construct a wall on the other side of the driveway for aesthetic purposes. Mr. Picton asked for one specific final plan to which there could be no owner embellishments later on. He also asked for a statement that the work as designed would not cause a failure in any banks downstream. Mr. Picton noted that if an application had been submitted as required before the work had been done, it would have had to comply with current engineering standards. The commissioners agreed that the owner should post a \$5000 bond. Mr. Picton said the bond must be posted and the written statements submitted to the Land Use Office before any work may resume. Mr. Szymanski said he would submit baseline photos for the file.

#### **Enforcement Report**

**Carter/292 Walker Brook Road/#IW-04-V8/Repair Retaining Wall:** Mr. Ajello said he had received

a letter requesting the release of the bond.

**MOTION:** To authorize the Wetlands Enforcement Officer to return the bond posted by Mr. Carter for streambank restoration work at 292 Walker Brook Road. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

**Crumrine/106 Litchfield Turnpike/Unauthorized Shed:** It was noted that Mrs. Crumrine had not yet moved the shed as she had been ordered. Mr. Picton asked Mr. Ajello to advise her that the Commission would issue a second fine if it has not been moved by the next meeting.

**DiBenedetto/212-214 Calhoun Street/Restoration of Understory:** Mr. Picton was glad to learn that a site inspection with the owner and Mr. Jontos of Land Tech had finally been scheduled, but cautioned that no work should be done until Mr. Jontos had drawn up a specific written plan that could be followed. Verbal instructions to the workers would not be sufficient, he said, because Mr. Jontos would not be there for direction the entire time the work was underway. Mr. Ajello thought this would delay the start of work, saying that the cutting would be done by hand and that this was the time of year to do it when the ground was frozen and so would not be easily disturbed. Mr. Picton pointed out that #6 in Mr. Jontos's scope of services dated 6/8/2007 he stated that he would prepare a report of his findings. He asked if the Commission had received his recommendations in writing and said both the report and his recommendations were needed before work was begun. He said an orderly process was needed so the work done could be compared with the recommendations in the report and it could be determined whether the objectives had been accomplished. Mr. Bedini asked if the written report could be waived if Mr. Jontos would agree to be on site for the whole time that the work was in progress. Mr. Picton said it could.

**Lodsins/78 Litchfield Turnpike/Unauthorized Excavation/#IW-07-V12:** Mr. Ajello said the DMV had not yet returned his calls. He noted he had sent an enforcement letter to inform Mr. Lodsins that he is required to restore the property under the guidance of the Commission's consultant and he had filed the enforcement order on the Land Records. Mr. Picton said he had contacted Atty. Zizka. He asked that all relevant information be forwarded to him and that he be asked to proceed with enforcement action to compel Mr. Lodsins to restore the property. Mr. Picton thought the Commission could hire an expert to make recommendations regarding how the property should be restored and to seek payment for this cost through court action. He noted that Atty. Zizka may be able to attach the property to secure payment. Mr. LaMunier thought the whole history of the property should be sent to Atty. Zizka to help him prepare the case. It was noted that there are many files for past applications and enforcement actions on this property so Mr. Ajello was advised to contact Atty. Zizka to ask what specific information should be sent to him.

**Matthews/50 Painter Ridge Road:** Mr. Ajello reported that the Certificate of Occupancy would not be issued until the required planting had been completed.

**Peloquin/1 New Preston Hill Road/#IW-07-V13/Unauthorized Clearcutting, Excavation, Stonework:** It was noted that at the last meeting the Commission had asked for a site development plan for the entire property and that this had not yet been submitted. It was also noted that Mr. Peloquin had not yet paid his citation.

**Moore/25 Litchfield Turnpike/Unauthorized Filling, Clearcutting:** Mr. Ajello reported that the work had been completed and that he would soon conduct a final inspection. He said the order was still on the Land Records and the last fine had not yet been paid.

**Wright/59 Scofield Hill Road/Unauthorized Clearing, Filling, Soil Disturbance:** Mr. Ajello said he had sent Mr. Wright a letter to advise him that the required restoration work must be completed.

**Rubler/240 Wykeham Road/Clearing and Driveway Washout:** The bond will be held until the pool

construction is properly completed in the spring.

**Brown/127 West Shore Road/Unauthorized Work Along the Shoreline:** Mr. Picton noted the enforcement order had not yet been filed on the Land Records and he asked Mr. Ajello to do this. Mr. Picton said that based on scientific documents the Commission had received on hard landscaping along the lake shore it could limit the construction of hard retaining walls along the lake. This had been done in the Brown permit, but the owner hardened more of the lake shore than had been approved and so the Commission has persisted in telling him that he has to remove it. Mr. Bedini asked where the property boundary was along the lake shore and said he would research this. He recommended that the Commission make sure that all wall applications had been properly handled in the past and that the work applied for had actually been on the applicants' properties. Mr. Picton asked that a follow up enforcement letter be sent to Mr. Brown and said the Commission would consider additional fines if the matter was not resolved. Mr. Picton asked the commissioners to study all of the information received on hard landscaping along the shoreline.

**Howard/99 West Shore Road/Unauthorized Stairs:** Mr. Picton asked Mr. Ajello to send another enforcement letter to Mr. Howard and to issue additional fines if there is no response.

#### Administrative Business

**Fees for Violations:** Mr. Picton said that Atty. Zizka had advised him that there were three ways that the Commission could collect the fees it incurs when working to resolve violations and enforcement matters: 1) get the violator to agree to submit an application for the required restoration work to be done under the supervision of the Commission's consultant, 2) hire its own consultant who would begin to draft the terms of the restoration plan and convince the violator to voluntarily pay the Town's consulting fees, and 3) pursue the matter in court and try to collect all costs as damages. Mr. Bedini noted the Commission would now be forced to process after the fact applications. Mr. Picton explained that the application would have the limited purpose of resolving the enforcement issue and accomplishing the required restoration. Mr. Bedini recommended that a separate application form be generated for this purpose and that it be entitled, "Application to Correct a Violation." He said he would work on drafting it. Mr. Ajello pointed out that if a violator submits an application he will have to pay for his own consultant and for the Commission's consultant to review the proposed plan and so it would be to his advantage to agree to pay for the Commission's consultant (option #2 above) because it would cost him less. Mr. Picton advised the commissioners to review Atty. Zizka's proposed language so that it can be discussed and agreed upon at the next meeting and then forwarded to the Board of Selectmen for review.

**Revision of the Regulations:** Work by the subcommittee is ongoing.

#### Miscellaneous Administrative Business

1. Health Dept./Inland Wetlands Commission Coordination: Mr. Picton noted that the Health Dept. often does not contact the Commission to review plans for septic work to be done within the Commission's jurisdiction. Mr. Bedini suggested that the Commission work through the Selectmen's Office to draft a form to be used by the Health Dept. when it reviews all of its applications. This form would include a wetlands review check off that would have to be completed prior to any final Health approval.
2. Checklist form for Application Completeness: Mr. Picton brought in several different check lists and worksheets that could be used by the EO for reviewing applications for completeness. It was hoped that comparing the Commission's current checklist with these and then making some revisions, would result in an improved and more useful form.
3. Rumsey Hall School/184 Romford Road/ Hockey Rink: Mrs. D. Hill said she had read about the rink

in the paper and thought that the Inland Wetlands Commission should have been advised of the application. Mr. Ajello said the rink would be set back from the steep slopes and would be approx. 350 ft. from the river. Mrs. D. Hill compared the proposed location of the rink to that of the Brighenti tennis court for which, she said, the Commission required a permit because it was up hill above wetlands with a watercourse below. Mr. Picton noted that the EO had determined there were no wetlands issues.

MOTION: To enter Executive Session at 10:34 p.m. to discuss pending litigation. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

MOTION: To close Executive Session at 10:53 p.m. By Mrs. Hill, seconded by Mr. Bedini, and passed 5-0.

MOTION: To adjourn the meeting. By Mrs. Hill.

Mr. Picton adjourned the meeting at 10:34 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

By Janet M. Hill

Land Use Coordinator